

AMENDED IN SENATE AUGUST 31, 2015

AMENDED IN SENATE JUNE 17, 2015

AMENDED IN ASSEMBLY MAY 21, 2015

AMENDED IN ASSEMBLY MAY 12, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## ASSEMBLY BILL

**No. 428**

**Introduced by Assembly Member Nazarian**

*(Coauthors: Assembly Members Chávez, Levine, Ting, and Wilk)*

February 19, 2015

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An act to add and repeal Sections 17053.50 and 23650 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

### LEGISLATIVE COUNSEL'S DIGEST

AB 428, as amended, Nazarian. Income taxes: credit: seismic retrofits.

The Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws.

~~This bill would allow~~, *bill*, for taxable years beginning on or after January 1, 2017, and before January 1, 2022, *would allow* a tax credit under both laws in an amount equal to 30% of the qualified costs paid or incurred by a qualified taxpayer for any seismic retrofit construction on a qualified building, as provided. The bill would require a ~~taxpayer~~ *taxpayer, in order to be eligible for the credit*, to obtain 2 certifications from the appropriate jurisdiction with authority for building code enforcement of the area in which the building is located: one *prior to seismic retrofit construction* that certifies that the building is an at-risk ~~property~~ *property*, and ~~one~~ *a second subsequent to construction* that

certifies that the *completed construction* is seismic retrofit construction, as defined, ~~has been completed, and specifies a dollar amount of qualified costs.~~ The bill would further require the taxpayer to *provide the second certification to and apply to for allocation of the credit with the Franchise Tax Board for allocation of the credit and to provide a specified certification and for the Franchise Tax Board Board, and would require the board to allocate credits on a first-come-first-served basis.* The bill would provide that the credit would have an aggregate cap under both laws of \$12,000,000 for each calendar year, as provided.

*Existing law requires a bill that would authorize a new credit against the tax imposed by the Personal Income Tax Law or the Corporation Tax Law to contain specific goals, purposes, and objectives that the new credit will achieve and detailed performance indicators and data collection requirements for determining whether the new credit achieves these goals, purposes, and objectives.*

*This bill would make findings specifying the goals, purposes, and objectives of the above-described tax credits and detailing the performance indicators and data collection requirements for determining whether the credits meet these goals, purposes, and objectives.*

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 17053.50 is added to the Revenue and
- 2 Taxation Code, to read:
- 3 17053.50. (a) For taxable years beginning on or after January
- 4 1, 2017, and before January 1, 2022, there shall be allowed to a
- 5 qualified taxpayer a credit against the “net tax,” as defined in
- 6 Section 17039, in an amount equal to 30 percent of the qualified
- 7 taxpayer’s qualified costs.
- 8 (b) For purposes of this section:
- 9 (1) “At-risk property” means a building that is deemed
- 10 hazardous and in danger of collapse in the event of a catastrophic
- 11 earthquake, including, but not limited to, soft story buildings,
- 12 nonductile concrete residential buildings, and pre-1994 concrete
- 13 residential buildings.

1 (2) “Qualified building” means a building that has been certified  
2 as an at-risk property pursuant to subparagraph (A) of paragraph  
3 (1) of subdivision (c). A qualified building includes a mobilehome  
4 registered by the Department of Housing and Community  
5 Development.

6 (3) “Qualified costs” means the costs paid or incurred by the  
7 qualified taxpayer for any completed seismic retrofit construction  
8 on a qualified building, including any engineering or architectural  
9 design work necessary to permit or complete the seismic retrofit  
10 construction less the amount of any grant provided by a public  
11 entity for the seismic retrofit construction. “Qualified costs” do  
12 not include any of the following costs paid or incurred by the  
13 qualified taxpayer:

14 (A) Maintenance, including abatement of deferred or inadequate  
15 maintenance, and correction of violations unrelated to the seismic  
16 retrofit construction.

17 (B) Repair, including repair of earthquake damage.

18 (C) Seismic retrofit construction required by local building  
19 codes as a result of addition, repair, building relocation, change  
20 of use, or occupancy.

21 (D) Other work or improvement required by local building or  
22 planning codes as a result of the intended seismic retrofit  
23 construction.

24 (E) Rent reductions or other associated compensation,  
25 compliance actions, or other related coordination involving the  
26 qualified taxpayer and any other party, including a tenant, insurer,  
27 or lender.

28 (F) Replacement of existing building components, including  
29 equipment, except as needed to complete the seismic retrofit  
30 construction.

31 (G) Bracing or securing nonpermanent building contents.

32 (H) The offset of costs, reimbursements, or other costs  
33 transferred from the qualified taxpayers to others.

34 (I) Any amount paid by the qualified taxpayer to the jurisdiction  
35 with authority for building code enforcement for issuing the  
36 certifications required pursuant to subparagraphs (A) and (B) of  
37 paragraph (1) of subdivision (c).

38 (4) “Qualified taxpayer” means a taxpayer that is an owner of  
39 a qualified building located in this state. A taxpayer that owns a  
40 proportional share of a qualified building in this state may claim

1 the credit allowed by this section based on the taxpayer's share of  
2 the qualified costs.

3 (5) (A) "Seismic retrofit construction" means alteration of a  
4 qualified building or its components to substantially mitigate  
5 seismic damage. Seismic retrofit construction shall be for work  
6 performed, and for which qualified costs were paid or incurred,  
7 on or after January 1, 2017. Seismic retrofit construction shall  
8 include, but not be limited to, the following:

- 9 (i) Anchoring the structure to the foundation.
- 10 (ii) Bracing cripple walls.
- 11 (iii) Bracing hot water heaters.
- 12 (iv) Installing automatic gas shutoff valves.
- 13 (v) Repairing or reinforcing the foundation to improve the  
14 integrity of the foundation against seismic damage.
- 15 (vi) Anchoring fuel storage.
- 16 (vii) Installing an earthquake resistant bracing system for  
17 mobilehomes that are registered with the Department of Housing  
18 and Community Development.

19 (B) Notwithstanding subparagraph (A), seismic retrofit  
20 construction does not include construction performed to bring a  
21 building into compliance with local building codes.

22 (c) To be eligible for the credit, the following shall apply:

23 (1) The qualified taxpayer shall do all of the following:

24 (A) Prior to the seismic retrofit construction, obtain certification  
25 from the appropriate jurisdiction with local building code  
26 enforcement authority that the building is an at-risk property.

27 (B) Obtain certification from the appropriate jurisdiction with  
28 authority for building code enforcement, upon a review of the  
29 building, that the completed construction satisfies the definition  
30 of seismic retrofit construction. The certification shall identify  
31 what part of the completed construction, if any, is not seismic  
32 retrofit construction, and specify a dollar amount of qualified costs.

33 (C) Request and be granted an allocation of the credit from the  
34 Franchise Tax Board. To request an allocation, the taxpayer shall  
35 sign and submit to the Franchise Tax Board an application to  
36 receive a credit for the seismic retrofit construction and provide a  
37 copy of the certification obtained pursuant to subparagraph (B).

38 (D) Retain for his or her records a copy of the certifications  
39 specified in subparagraphs (A) and (B).

1 (2) The jurisdiction with authority for building code enforcement  
2 in which a qualified building is located has entered into an  
3 agreement with the state to provide certifications pursuant to this  
4 section and to not seek reimbursement pursuant to Section 6 of  
5 Article XIII B of the California Constitution for any costs incurred  
6 in providing those certifications.

7 (d) (1) The credit amount allowed in subdivision (a) shall be  
8 claimed by a qualified taxpayer at the rate of one-fifth of the credit  
9 amount for the taxable year in which the credit is ~~allowed,~~  
10 *allocated*, and one-fifth of the credit amount for each of the  
11 subsequent four taxable years.

12 (2) In the case where the credit allowed under this section  
13 exceeds the “net tax,” as defined in Section 17039, for a taxable  
14 year, the excess credit may be carried over to reduce the “net tax”  
15 in the following taxable year, and succeeding four taxable years,  
16 if necessary, until the credit has been exhausted.

17 (e) (1) The total amount of credit that may be allocated pursuant  
18 to this section and Section 23650 shall not exceed the sum of the  
19 following:

20 (A) Twelve million dollars (\$12,000,000) for the 2017 calendar  
21 year and each calendar year thereafter.

22 (B) The amount of previously unallocated credits allowed under  
23 this section.

24 (2) Upon receipt of the application and certification described  
25 in subparagraph (C) of paragraph (1) of subdivision (c), the  
26 Franchise Tax Board shall notify the taxpayer of the amount, if  
27 any, of credit allowed and allocate the credit to a qualified taxpayer  
28 on a first-come-first-served basis.

29 (3) (A) The taxpayer shall claim the credit on a timely filed  
30 original return.

31 (B) The determination of the Franchise Tax Board with respect  
32 to the allocation of the credit, and whether a return has been timely  
33 filed for purposes of this subdivision may not be reviewed in any  
34 administrative or judicial proceeding.

35 (C) Any disallowance of a credit claimed due to a determination  
36 under this subdivision, including the application of the limitation  
37 specified in paragraph (1), shall be treated as a mathematical error  
38 appearing on the return. Any amount of tax resulting from that  
39 disallowance may be assessed by the Franchise Tax Board in the  
40 same manner as provided by Section 19051.

1 (f) This credit shall be in lieu of any other credit or deduction  
2 that the qualified taxpayer may otherwise claim pursuant to this  
3 part with respect to qualified costs.

4 (g) The Franchise Tax Board may prescribe rules, guidelines,  
5 or procedures necessary or appropriate to carry out the purposes  
6 of this section, including any guidelines regarding the allocation  
7 of the credit allowed under this section. Chapter 3.5 (commencing  
8 with Section 11340) of Part 1 of Division 3 of Title 2 of the  
9 Government Code does not apply to any rule, guideline, or  
10 procedure prescribed by the Franchise Tax Board pursuant to this  
11 section.

12 ~~(h) Section 41 shall not apply to the credit allowed pursuant to~~  
13 ~~this section.~~

14 (i)

15 (h) This section shall remain in effect only until December 1,  
16 2022, and as of that date is repealed.

17 SEC. 2. Section 23650 is added to the Revenue and Taxation  
18 Code, to read:

19 23650. (a) For taxable years beginning on or after January 1,  
20 2017, and before January 1, 2022, there shall be allowed to a  
21 qualified taxpayer a credit against the “tax,” as defined in Section  
22 23036, in an amount equal to 30 percent of the qualified taxpayer’s  
23 qualified costs.

24 (b) For purposes of this section:

25 (1) “At-risk property” means a building that is deemed  
26 hazardous and in danger of collapse in the event of a catastrophic  
27 earthquake, including, but not limited to, soft story buildings,  
28 nonductile concrete residential buildings, and pre-1994 concrete  
29 residential buildings.

30 (2) “Qualified building” means a building that has been certified  
31 as an at-risk property pursuant to subparagraph (A) of paragraph  
32 (1) of subdivision (c). A qualified building includes a mobilehome  
33 registered by the Department of Housing and Community  
34 Development.

35 (3) “Qualified costs” means the costs paid or incurred by the  
36 qualified taxpayer for any completed seismic retrofit construction  
37 on a qualified building, including any engineering or architectural  
38 design work necessary to permit or complete the seismic retrofit  
39 construction less the amount of any grant provided by a public  
40 entity for the seismic retrofit construction. “Qualified costs” do

1 not include any of the following costs paid or incurred by the  
2 qualified taxpayer:

3 (A) Maintenance, including abatement of deferred or inadequate  
4 maintenance, and correction of violations unrelated to the seismic  
5 retrofit construction.

6 (B) Repair, including repair of earthquake damage.

7 (C) Seismic retrofit construction required by local building  
8 codes as a result of addition, repair, building relocation, change  
9 of use, or occupancy.

10 (D) Other work or improvement required by local building or  
11 planning codes as a result of the intended seismic retrofit  
12 construction.

13 (E) Rent reductions or other associated compensation,  
14 compliance actions, or other related coordination involving the  
15 qualified taxpayer and any other party, including a tenant, insurer,  
16 or lender.

17 (F) Replacement of existing building components, including  
18 equipment, except as needed to complete the seismic retrofit  
19 construction.

20 (G) Bracing or securing nonpermanent building contents.

21 (H) The offset of costs, reimbursements, or other costs  
22 transferred from the qualified taxpayers to others.

23 (I) Any amount paid by the qualified taxpayer to the jurisdiction  
24 with authority for building code enforcement for issuing the  
25 certifications required pursuant to subparagraphs (A) and (B) of  
26 paragraph (1) of subdivision (c).

27 (4) "Qualified taxpayer" means a taxpayer that is an owner of  
28 a qualified building located in this state. A taxpayer that owns a  
29 proportional share of a qualified building in this state may claim  
30 the credit allowed by this section based on the taxpayer's share of  
31 the qualified costs.

32 (5) (A) "Seismic retrofit construction" means alteration of a  
33 qualified building or its components to substantially mitigate  
34 seismic damage. Seismic retrofit construction shall be for work  
35 performed, and for which qualified costs were paid or incurred,  
36 on or after January 1, 2017. Seismic retrofit construction shall  
37 include, but not be limited to, the following:

38 (i) Anchoring the structure to the foundation.

39 (ii) Bracing cripple walls.

40 (iii) Bracing hot water heaters.

- 1 (iv) Installing automatic gas shutoff valves.
- 2 (v) Repairing or reinforcing the foundation to improve the  
3 integrity of the foundation against seismic damage.
- 4 (vi) Anchoring fuel storage.
- 5 (vii) Installing an earthquake resistant bracing system for  
6 mobilehomes that are registered with the Department of Housing  
7 and Community Development.
- 8 (B) Notwithstanding subparagraph (A), seismic retrofit  
9 construction does not include construction performed to bring a  
10 building into compliance with local building codes.
- 11 (c) To be eligible for the credit, the following shall apply:
- 12 (1) The qualified taxpayer shall do all of the following:
- 13 (A) Prior to the seismic retrofit construction, obtain certification  
14 from the appropriate jurisdiction with local building code  
15 enforcement authority that the building is an at-risk property.
- 16 (B) Obtain certification from the appropriate jurisdiction with  
17 authority for building code enforcement, upon a review of the  
18 building, that the completed construction satisfies the definition  
19 of seismic retrofit construction. The certification shall identify  
20 what part of the completed construction, if any, is not seismic  
21 retrofit construction and specify a dollar amount of qualified costs.
- 22 (C) Request and be granted an allocation of the credit from the  
23 Franchise Tax Board. To request an allocation, the taxpayer shall  
24 sign and submit to the Franchise Tax Board an application to  
25 receive a credit for the seismic retrofit construction and provide a  
26 copy of the certification obtained pursuant to subparagraph (B).
- 27 (D) Retain for his or her records a copy of the certifications  
28 specified in ~~subparagraph~~ *subparagraphs* (A) and (B).
- 29 (2) The jurisdiction with authority for building code enforcement  
30 in which a qualified building is located has entered into an  
31 agreement with the state to provide certifications pursuant to this  
32 section and to not seek reimbursement pursuant to Section 6 of  
33 Article XIII B of the California Constitution for any costs incurred  
34 in providing those certifications.
- 35 (d) (1) The credit amount allowed in subdivision (a) shall be  
36 claimed by a qualified taxpayer at the rate of one-fifth of the credit  
37 amount for the taxable year in which the credit is ~~allowed~~,  
38 *allocated*, and one-fifth of the credit amount for each of the  
39 subsequent four taxable years.

1 (2) In the case where the credit allowed under this section  
2 exceeds the “tax,” as defined in Section 23036, for a taxable year,  
3 the excess credit may be carried over to reduce the “tax” in the  
4 following taxable year, and succeeding four taxable years, if  
5 necessary, until the credit has been exhausted.

6 (e) (1) The total amount of credit that may be allocated pursuant  
7 to this section and Section 17053.50 shall not exceed the sum of  
8 the following:

9 (A) Twelve million dollars (\$12,000,000) for the 2017 calendar  
10 year and each calendar year thereafter.

11 (B) The amount of previously unallocated credits allowed under  
12 this section.

13 (2) Upon receipt of the application and ~~certifications~~ *certification*  
14 described in subparagraph (C) of paragraph (1) of subdivision (c),  
15 the Franchise Tax Board shall notify the taxpayer of the amount,  
16 if any, of credit allowed and allocate the credit to a qualified  
17 taxpayer on a first-come-first-served basis.

18 (3) (A) The taxpayer shall claim the credit on a timely filed  
19 original return.

20 (B) The determination of the Franchise Tax Board with respect  
21 to the allocation of the credit, and whether a return has been timely  
22 filed for purposes of this subdivision may not be reviewed in any  
23 administrative or judicial proceeding.

24 (C) Any disallowance of a credit claimed due to a determination  
25 under this subdivision, including the application of the limitation  
26 specified in paragraph (1), shall be treated as a mathematical error  
27 appearing on the return. Any amount of tax resulting from that  
28 disallowance may be assessed by the Franchise Tax Board in the  
29 same manner as provided by Section 19051.

30 (f) This credit shall be in lieu of any other credit or deduction  
31 that the qualified taxpayer may otherwise claim pursuant to this  
32 part with respect to qualified costs.

33 (g) The Franchise Tax Board may prescribe rules, guidelines,  
34 or procedures necessary or appropriate to carry out the purposes  
35 of this section, including any guidelines regarding the allocation  
36 of the credit allowed under this section. Chapter 3.5 (commencing  
37 with Section 11340) of Part 1 of Division 3 of Title 2 of the  
38 Government Code does not apply to any rule, guideline, or  
39 procedure prescribed by the Franchise Tax Board pursuant to this  
40 section.

1 ~~(h) Section 41 shall not apply to the credit allowed pursuant to~~  
2 ~~this section.~~

3 ~~(i)~~

4 (h) This section shall remain in effect only until December 1,  
5 2022, and as of that date is repealed.

6 SEC. 3. *For the purposes of complying with Section 41 of the*  
7 *Revenue and Taxation Code, the Legislature finds and declares*  
8 *all of the following with respect to Sections 17053.50 and 23650*  
9 *of the Revenue and Taxation Code:*

10 (a) *The specific goals, purposes, and objectives that the tax*  
11 *credits will achieve are as follows:*

12 (1) *Leveraging sixty million dollars (\$60,000,000) in private*  
13 *investment.*

14 (2) *Creating thousands of engineering or construction jobs.*

15 (3) *Mitigating seismic damage to save lives.*

16 (b) *The detailed performance indicators for the Legislature to*  
17 *use when measuring whether the tax credits meet those specific*  
18 *goals, purposes, and objectives are as follows:*

19 (1) *The amount of private sector investment enabled by*  
20 *allocation of the tax credits.*

21 (2) *The number of engineering or construction jobs created as*  
22 *a result of this investment.*

23 (3) *The estimated number of lives saved by the seismic*  
24 *retrofitting of buildings facilitated by the tax credits.*

25 (c) *The data collection requirements to enable the Legislature*  
26 *to determine whether the tax credits are meeting, failing to meet,*  
27 *or exceeding those specific goals, purposes, and objectives are as*  
28 *follows:*

29 (1) *To assist the Legislature in measuring whether the tax credits*  
30 *meet the goals, purposes, and objectives specified in subdivision*  
31 *(a), the Legislative Analyst shall review the effectiveness of the*  
32 *tax credits and may request information from the Franchise Tax*  
33 *Board and any state governmental entity with authority relating*  
34 *to the seismic retrofit construction of at-risk properties.*

35 (2) *The Franchise Tax Board and any state governmental entity*  
36 *with authority relating to the seismic retrofit construction of at-risk*  
37 *properties shall provide to the Legislative Analyst any data*  
38 *requested by the Legislative Analyst pursuant to this subdivision.*

1     ~~SEC. 3.~~

2     *SEC. 4.*   This act provides for a tax levy within the meaning  
3   of Article IV of the Constitution and shall go into immediate effect.

O